

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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APPEAL BRIEF

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I. INTRODUCTION

In response to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on March 25, 2010 and the Final Office Action mailed November 2, 2009 ("Final Office Action"), rejecting pending claims 24-32, Appellant respectfully requests that the Board of Patent Appeals and Interferences ("Board") reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto as Appendix A.

II. REAL PARTY IN INTEREST

The real party in interest is Xanadoo Company, the assignee of the above-referenced application.

III. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

IV. STATUS OF CLAIMS

Claims 1-18 have been cancelled without prejudice.

Claims 19-23 are currently withdrawn from consideration.

Claims 24-32 are currently pending in this application.

Claims 24-32 were rejected in the Final Office Action under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,289,389 to Kikinis ("Kikinis") in view of U.S. Patent Application Publication US 2002/0106086 to Kamiya *et al.* ("Kamiya"). The rejection of claims 24-32 is hereby appealed.

V. STATUS OF AMENDMENTS

No amendments to the claims have been filed subsequent to the Final Office Action.

VI. SUMMARY OF CLAIMED SUBJECT MATTER

A concise explanation of each of the independent claims is provided, including references

to exemplary portions of the specification and figures. The references to the specification and figures refer to the specification as filed on September 23, 2003.

A. Summary of the Invention

An embodiment of the present invention relates generally to a system, method and software application for securely transmitting information. More particular, an embodiment of the present invention relates to a system, method and software application which allows for the secure transmission of information using multiple transmission methods to enhance security and efficiency. *See, e.g.*, page 1, lines 9-13. According to an exemplary embodiment, first and second sets of data may be transmitted via the Internet. The first set of data may be addressed to follow a first transmission path and the second set of data may be addressed to follow a second transmission path. In accordance with this preferred embodiment, the first and second addresses may be automatically attached to the packetized data so that the first and second sets of data appear to potential hackers and packet sniffing software as belonging to two distinct messages. *See, e.g.*, page 6, lines 1-7.

Also, a first set of data may be transmitted via a first frequency or channel and a second set of data may be transmitted via a second frequency or channel. In accordance with this embodiment, a wireless computer network, such as a network transmitting data via Wi-Fi transmission protocols, may transmit the first set of data on a first Wi-Fi frequency and the second set of data on a second Wi-Fi frequency. *See, e.g.*, page 6, lines 8-13.

Further, a first set of data may be transmitted via a first transmission system at a first time and a second set of data may be transmitted by either the same transmission system or a second transmission system at a later time (i.e. after a selected time delay in the transmission). *See, e.g.*, page 6, lines 14-17.

B. Embodiments of the Claimed Invention

1. Explanation of Independent Claim 24

According to an embodiment of the present invention, claim 24 is directed to a method for requesting and securely receiving data from the Internet, said method comprising the steps of:

receiving a request for data; (Figure 3, step 56) (*See, e.g.*, column 9, lines 12-23)

collecting data in response to said request; (Figure 3, step 58) (*See, e.g.*, page 10, lines 9-14)

packetizing said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data; (Figure 3, steps 62 and 64) (*See, e.g.*, page 10, lines 15-19; page 1, lines 22-24)

selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets; (Figure 3, step 66) (*See, e.g.*, page 10, lines 19-21; page 6, lines 1-7)

selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency; (Figure 3, step 68) (*See, e.g.*, page 10, lines 21-23; page 6, lines 1-7; page 6, lines 8-13; page 6, lines 14-17)

transmitting said first set of data packets via said first channel; and (Figure 3, step 70) (*See, e.g.*, page 6, lines 14-15)

transmitting said second set of data packets via said second channel. (Figure 3, step 70)

(*See, e.g.*, page 6, lines 14-15)

2. Explanation of Independent Claim 25

According to an embodiment of the present invention, claim 25 is directed to a computer readable medium executing and storing a software application for enabling requesting and securely receiving data from the Internet, said software application comprising:

one or more instructions for receiving a request for data; (Figure 3, step 56) (*See, e.g.*, column 9, lines 12-23)

one or more instructions for collecting data in response to said request; (Figure 3, step 58) (*See, e.g.*, page 10, lines 9-14)

one or more instructions for packetizing said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data; (Figure 3, steps 62 and 64) (*See, e.g.*, page 10, lines 15-19 and page 1, lines 22-24)

one or more instructions for selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets; (Figure 3, step 66) (*See, e.g.*, page 10, lines 19-21; page 6, lines 1-7; page 6, lines 8-13)

one or more instructions for selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency; (Figure 3, step 68) (*See, e.g.*, page 10, lines 21-23; page 6, lines 1-7; page 6, lines 8-13, page 6, lines 14-17)

one or more instructions for transmitting said first set of data packets via said first

channel; and (Figure 3, step 70) (*See, e.g.*, page 6, lines 14-15)

one or more instructions for transmitting said second set of data packets via said second channel. (Figure 3, step 70) (*See, e.g.*, page 6, lines 14-15)

3. Explanation of Independent Claim 26

According to an embodiment of the present invention, claim 26 is directed to a system for requesting and securely receiving data, said system comprising:

a first computing element for receiving a request for data; (Figure 3, step 56) (*See, e.g.*, column 9, lines 12-23)

a second computing element for collecting data in response to said request; wherein said second computing element packetizes said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data; (Figure 3, steps 58, 62, and 64) (*See, e.g.*, page 10, lines 9-14; page 10, lines 15-19 and page 1, lines 22-24)

a first transmission system for transmitting said first set of data from said second computing element to said first computing element at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets; (Figure 3, step 66) (*See, e.g.*, page 10, lines 19-21; page 6, lines 1-7; page 6, lines 8-13)

a second transmission system for transmitting said second set of data from said second computing element to said first computing element at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency. (Figure 3, step 68) (*See, e.g.*, page 10, lines 21-23; page 6, lines 1-7; page 6, lines 8-

13; page 6, lines 14-17)

VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue on appeal is whether the rejection of claims 24-32 as being allegedly unpatentable over U.S. Patent No. 6,289,389 to Kikinis (“Kikinis”) in view of U.S. Patent Application Publication No. US 2002/0106086 to Kamiya *et al.* (“Kamiya”) is improper.

The claims each stand or fall independently. The reasons why each claim is separately patentable are presented in the Argument section below.

VIII. ARGUMENT

A. Brief Description of Art Applied to the Claims

1. Overview of U.S. Patent No. 6,289,389 to Kikinis

Kikinis is directed to a data delivery system having a server connected to data sources and adapted to transmit data to a user. *See* Abstract. As admitted by the Office, Kikinis makes no disclosure or suggestion of transmitting first set of data packets at a first transmission time and transmitting a second set of data packets at a second transmission time, wherein the second transmission time is different from the first transmission time. In fact, Kikinis teaches away from such a feature. Kikinis specifically teaches “it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route as described above, information from the same source can be sent by land and satellite at the same time.” *See e.g.*, column 6, lines 48-53. As transmission time of a first set of data packets and a second set of data packets, Kikinis teaches that they are transmitted at the same time.

2. Overview of U.S. Patent Application Publication No. US 2002/0106086 to Kamiya *et al.*

Kamiya is directed to a data delivery system highly resistant to misappropriation of data.

See Abstract. The purpose of Kamiya is to deliver digital data or content from an upstream system to a downstream system, wherein the upstream system performs multi-point delivery of encrypted digital data. *See, e.g.*, paragraph [0006]. The Office relies on Kamiya's discussion of in the case that key information and content information are transmitted over the same physical network, content information and key information are not delivered simultaneously. *See e.g.*, paragraph [0023]. According to Kamiya, this is equivalent to delivering content and key information over different routes.

B. Summary of the Argument

The rejection of claims 24-32 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kikinis and Kamiya is improper because the combination fails to make obvious each and every claim limitation as recited by Appellant.

C. Independent Claim 24 is Patentable Over Kikinis and Kamiya

The Office Action relies on a two reference combination to address the independent claim 24. Each of the applied references is deficient, alone or in any combination, to properly address each and every claim element as recited by Appellant. Even if the two disparate references could be combined, as suggested by the Office, the resulting combination would nevertheless fail to meet the various embodiments of the claimed inventions.

1. The Kikinis Reference Not Only Fails to Suggest Two Transmission Times and Channels of a Transmission Mode But Teaches Against Such a Feature

Independent claim 24 recites "selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;" and "selecting and addressing said second set of data packets for transmission at a second

transmission time via a second channel of **the transmission mode** at a second frequency,
wherein the second transmission time is different from the first transmission time and the second
frequency is different from the first frequency.”

The combination of Kikinis and Kamiya fail to address each and every claim element as recited in independent claim 24. Kikinis discloses two disparate transmission modes (e.g., Internet and Satellite) to transmit data packets and a decryption key. In particular, Kikinis discloses that the data packet is appropriately tagged with an IP address for identification by control software running in PC 19 and transmitted via the satellite 37. *See, e.g.*, column 6, lines 28-32. Also, Kikinis discloses that a decryption key may be sent back to the user via digital link 53 of Fig. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC. *See, e.g.*, column 6, lines 33-37. In fact, the Office admits, in the Response to Arguments section of the Final Office Action, that Kikinis discloses two different transmission paths. Thus, Kikinis discloses the transmission of data packets and a decryption key via two disparate transmission modes (e.g., Internet and Satellite) and fails to disclose, or even suggest, “selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a **transmission mode** at a first frequency, and automatically attaching a first address to said first set of data packets,” and “selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of **the transmission mode** at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency,” as recited in independent claim 24.

The Office Action admits that Kikinis fails to disclose or suggest that first data packets for transmission at a first transmission time and a second set of data packets for transmission at a

second transmission time, wherein the second transmission time is different from the first transmission time. *See* Final Office Action at page 6. In contrast to the claimed inventions, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route, information from the same source can be sent by land and satellite at the same time. *See, e.g.*, column 6, lines 48-53.

Moreover, Kikinis' disclosure and the claimed inventions are structurally different and the reason and motivation provided by the Office not only counter the disclosure of Kikinis and but also destroy the teachings set forth in the Kikinis disclosure. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Moreover, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). In this case, the proposed modification to transmit data packets and a decryption key at different times when Kikinis teaches that such would not be desired and destroys the teachings of Kikinis and is therefore improper. Thus, Appellant submits that the Office has failed to properly address at least this claim limitation.

2. Kikinis Teaches Against a Combination With Kamiya

Acknowledging the severe deficiencies of Kikinis, the Office relies on Kamiya to remedy

the severe deficiencies. Appellant submits that Kikinis teaches away from Kamiya. Specifically, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route as described above, information from the same source can be sent by land and satellite at the same time. See *e.g.*, column 6, lines 48-53. In contrast, Kamiya discloses that in case where key information and content information are transmitted over the same physical network, content information and key information are not delivered simultaneously. See, *e.g.*, paragraph [0023]. Thus, Appellant submits that one skilled in the art would have no reason to combine transmission of content information and a decryption key at different times via the same physical network as disclosed by Kamiya with simultaneous transmission over disparate networks of Kikinis.

As stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). As confirmed in MPEP § 2145, it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731 (Fed. Cir. 1983).

3. The Office Has Failed to Consider the Claimed Inventions as a Whole

Appellant respectfully submits that the Office fails to consider the claimed inventions as a whole, and merely focuses on just the differences themselves with regard to application of the cited art. See MPEP §2141.02(I) and (III). Appellant further submits that the Office fails to consider the prior art in its entirety and merely picking and choosing selected portions for the alleged rejections of embodiments of the claimed inventions. Therefore, Kikinis and Kamiya, either alone or in combination, fail to render the claimed inventions as obvious. Accordingly, Appellant submits that the Office has failed to set forth a *prima facie* case of obviousness for at

least independent claim 24.

As stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). That is, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970). Accordingly, for at least the above reasons, the Appellant respectfully requests the reversal of the rejection of independent claim 24 under 35 U.S.C. § 103(a).

4. One of Ordinary Skill in the Art Would Have No Reason to Combine Kikinis and Kamiya

The Office has failed to set forth a proper statement of motivation to address the admitted deficiencies. There is nothing in Kikinis that suggests any desirability or any need to transmit data packets and a decryption key at different times. There is simply no reason for one skilled in the art to modify Kikinis as suggested by the Office. Kamiya fails to provide any reason to modify the system of Kikinis. The Office summarily concludes that it would have been obvious to combine the disparate teachings of Kikinis and Kamiya for reasons unrelated to the admitted deficiencies. The Office fails to provide a proper statement of motivation for restructuring the system of Kikinis to transmit data packets and a decryption key at different times. As information from the same source can be sent by land and satellite at the same time, Kikinis teaches away from transmitting data packets and a decryption key at different times. Therefore, the alleged statements of motivation are based purely on improper hindsight. Even if Kikinis’ system could be drastically modified as suggested by the Office, the resulting modified system would nevertheless fail to show each and every limitation claimed by Appellant, as detailed above. As each and every claim limitation is not disclosed by the combination of Kikinis and

Kamiya and the Final Office Action fails to properly address at least these claim limitations, the rejections are improper and should be withdrawn.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *see also KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. *KSR*, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. *Id.* at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. *Id.*; *In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. *KSR*, 127 S. Ct. at 1740-41.

Accordingly, in view of the preceding arguments, because the combination of Kikinis and Kamiya fails to present a *prima facie* case of obviousness against the claimed inventions, Appellant respectfully requests that the rejection of at least claim 24 be withdrawn and Appellant respectfully requests that claim 24 and all claims dependent thereon be allowed.

D. Independent Claim 25 is Patentable Over Kikinis and Kamiya

The Office relies on a two reference combination to address the independent claim 25. Each of the applied references is deficient, alone or in any combination, to properly address each and every claim element as recited by Appellant. Even if the two disparate references could be combined, as suggested by the Office, the resulting combination would nevertheless fail to meet the various embodiments of the claimed inventions.

1. The Kikinis Reference Not Only Fails to Suggest Two Transmission Times and Channels of a Transmission Mode But Teaches Against Such a Feature

Independent claim 25 recites “one or more instructions for selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;” and “one or more instructions for selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency.”

The combination of Kikinis and Kamiya fail to address each and every claim element as recited in independent claim 25. Rather, Kikinis discloses two disparate transmission modes (e.g., Internet and Satellite) to transmit data packets and a decryption key. In particular, Kikinis discloses that the data packet is appropriately tagged with an IP address for identification by control software running in PC 19 and transmitted via the satellite 37. *See, e.g.*, column 6, lines 28-32. Also, Kikinis discloses that a decryption key may be sent back to the user via digital link 53 of Fig. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC. *See, e.g.*, column 6, lines 33-37. In fact, the Office admits, in the Response to Arguments section of the Final Office Action, that Kikinis

discloses two different transmission paths. Thus, Kikinis discloses the transmission of data packets and a decryption key via two disparate transmission modes (e.g., Internet and Satellite) and fails to disclose, or even suggest, “one or more instructions for selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a **transmission mode** at a first frequency, and automatically attaching a first address to said first set of data packets,” and “one or more instructions for selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of **the transmission mode** at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency,” as recited in independent claim 25.

The Office Action admits that Kikinis fails to disclose or suggest that first data packets for transmission at a first transmission time and a second set of data packets for transmission at a second transmission time, wherein the second transmission time is different from the first transmission time. *See* Final Office Action at page 6. In contrast to the claimed inventions, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route, information from the same source can be sent by land and satellite at the same time. *See, e.g.*, column 6, lines 48-53.

Moreover, Kikinis’ disclosure and the claimed inventions are structurally different and the reason and motivation provided by the Office not only counter the disclosure of Kikinis but also destroy the teachings set forth in the Kikinis disclosure. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221

USPQ 1125 (Fed. Cir. 1984). Moreover, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). In this case, the proposed modification to transmit data packets and a decryption key at different times when Kikinis teaches that such would not be desired and destroys the teachings of Kikinis and is therefore improper. Thus, Appellant submits that the Office has failed to properly address at least this claim limitation.

2. Kikinis Teaches Against a Combination With Kamiya

Acknowledging the severe deficiencies of Kikinis, the Final Office Action relies on Kamiya to remedy the severe deficiencies. Appellant submits that Kikinis teaches away from Kamiya. Specifically, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route as described above, information from the same source can be sent by land and satellite at the same time. *See e.g.*, column 6, lines 48-53. In contrast, Kamiya discloses that in case where key information and content information are transmitted over the same physical network, content information and key information are not delivered simultaneously. *See, e.g.*, paragraph [0023]. Thus, Appellant submits that one skilled in the art would have no reason to combine transmission of content information and a decryption key at different times via the same physical network as disclosed by Kamiya with simultaneous transmission over disparate networks of Kikinis.

As stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). As confirmed in MPEP § 2145, it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731 (Fed. Cir. 1983).

3. The Office Has Failed to Consider the Claimed Inventions as a Whole

Appellant respectfully submits that the Office fails to consider the claimed inventions as a whole, and merely focuses on just the differences themselves with regard to application of the cited art. See MPEP §2141.02(I) and (III). Appellant further submits that the Office fails to consider the prior art in its entirety and merely picking and choosing selected portions for the alleged rejections of embodiments of the claimed inventions. Therefore, Kikinis and Kamiya, either alone or in combination, fail to render the claimed inventions as obvious. Accordingly, Appellant submits that the Office has failed to set forth a *prima facie* case of obviousness for at least independent claim 25.

As stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). That is, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970). Accordingly, for at least the above reasons, the Appellant respectfully requests the reversal of the rejection of independent claim 25 under 35 U.S.C. § 103(a).

4. One of Ordinary Skill in the Art Would Have No Reason to Combine Kikinis and Kamiya

The Office has failed to set forth a proper statement of motivation to address the admitted deficiencies. There is nothing in Kikinis that suggests any desirability or any need to transmit

data packets and a decryption key at different times. There is simply no reason for one skilled in the art to modify Kikinis as suggested by the Office. Kamiya fails to provide any reason to modify the system of Kikinis. The Office summarily concludes that it would have been obvious to combine the disparate teachings of Kikinis and Kamiya for reasons unrelated to the admitted deficiencies. The Office fails to provide a proper statement of motivation for restructuring the system of Kikinis to transmit data packets and a decryption key at different times. As information from the same source can be sent by land and satellite at the same time, Kikinis teaches away from transmitting data packets and a decryption key at different times. Therefore, the alleged statements of motivation are based purely on improper hindsight. Even if Kikinis' system could be drastically modified as suggested by the Office, the resulting modified system would nevertheless fail to show each and every limitation claimed by Appellant, as detailed above. As each and every claim limitation is not disclosed by the combination of Kikinis and Kamiya and the Office fails to properly address at least these claim limitations, the rejections are improper and should be withdrawn.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *see also KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. *KSR*, 127 S. Ct. at 1739. However, a claimed invention combining multiple

known elements is not rendered obvious simply because each element was known independently in the prior art. *Id.* at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. *Id.*; *In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. *KSR*, 127 S. Ct. at 1740-41.

Accordingly, in view of the preceding arguments, because the combination of Kikinis and Kamiya fails to present a *prima facie* case of obviousness against the claimed inventions, Appellant respectfully requests that the rejection of at least claim 25 be withdrawn and Appellant respectfully requests that claim 25 and all claims dependent thereon be allowed.

E. Independent Claim 26 is Patentable Over Kikinis and Kamiya

The Office Action relies on a two reference combination to address the independent claim 26. Each of the applied references is deficient, alone or in any combination, to properly address each and every claim element as recited by Appellant. Even if the two disparate references could be combined, as suggested by the Office, the resulting combination would nevertheless fail to meet the various embodiments of the claimed inventions.

1. The Kikinis Reference Not Only Fails to Suggest Two Transmission Times and Channels of a Transmission Mode But Teaches Against Such a Feature

Independent claim 26 recites “a first transmission system for transmitting said first set of data from said second computing element to said first computing element at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;” and “a second transmission system for transmitting said second set of data from said second computing element to said first computing

element at a second transmission time via a second channel of **the transmission mode** at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency.”

The combination of Kikinis and Kamiya fail to address each and every claim element as recited in independent claim 26. Rather, Kikinis discloses two disparate transmission modes (e.g., Internet and Satellite) to transmit data packets and a decryption key. In particular, Kikinis discloses that the data packet is appropriately tagged with an IP address for identification by control software running in PC 19 and transmitted via the satellite 37. *See, e.g.*, column 6, lines 28-32. Also, Kikinis discloses that a decryption key may be sent back to the user via digital link 53 of Fig. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC. *See, e.g.*, column 6, lines 33-37. In fact, the Office admits, in the Response to Arguments section of the Final Office Action, that Kikinis discloses two different transmission paths. Thus, Kikinis discloses the transmission of data packets and a decryption key via two disparate transmission modes (e.g., Internet and Satellite) and fails to disclose, or even suggest, “a first transmission system for transmitting said first set of data from said second computing element to said first computing element at a first transmission time via a first channel of **a transmission mode** at a first frequency, and automatically attaching a first address to said first set of data packets,” and “a second transmission system for transmitting said second set of data from said second computing element to said first computing element at a second transmission time via a second channel of **the transmission mode** at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency,” as recited in independent claim 26.

The Office Action admits that Kikinis fails to disclose or suggest that first data packets for transmission at a first transmission time and a second set of data packets for transmission at a second transmission time, wherein the second transmission time is different from the first transmission time. *See* Final Office Action at page 6. In contrast to the claimed inventions, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route, information from the same source can be sent by land and satellite at the same time. *See, e.g.*, column 6, lines 48-53.

Moreover, Kikinis' disclosure and the claimed inventions are structurally different and the reason and motivation provided by the Office not only counter the disclosure of Kikinis and but also destroy the teachings set forth in the Kikinis disclosure. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Moreover, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). In this case, the proposed modification to transmit data packets and a decryption key at different times when Kikinis teaches that such would not be desired and destroys the teachings of Kikinis and is therefore improper. Thus, Appellant submits that the Office has failed to properly address at least this claim limitation.

2. Kikinis Teaches Against a Combination With Kamiya

Acknowledging the severe deficiencies of Kikinis, the Final Office Action relies on Kamiya to remedy the severe deficiencies. Appellant submits that Kikinis teaches away from Kamiya. Specifically, Kikinis discloses that it will be apparent to one with skill in the art that in a system of the invention whereby the user is connected to both a land route and a satellite route as described above, information from the same source can be sent by land and satellite at the same time. *See e.g.*, column 6, lines 48-53. In contrast, Kamiya discloses that in case where key information and content information are transmitted over the same physical network, content information and key information are not delivered simultaneously. *See, e.g.*, paragraph [0023]. Thus, Appellant submits that one skilled in the art would have no reason to combine transmission of content information and a decryption key at different times via the same physical network as disclosed by Kamiya with simultaneous transmission over disparate networks of Kikinis.

As stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). As confirmed in MPEP § 2145, it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731 (Fed. Cir. 1983).

3. The Office Has Failed to Consider the Claimed Inventions as a Whole

Appellant respectfully submits that the Office fails to consider the claimed inventions as a whole, and merely focuses on just the differences themselves with regard to application of the cited art. *See* MPEP §2141.02(I) and (III). Appellant further submits that the Office fails to consider the prior art in its entirety and merely picking and choosing selected portions for the alleged rejections of embodiments of the claimed inventions. Therefore, Kikinis and Kamiya,

either alone or in combination, fail to render the claimed inventions as obvious. Accordingly, Appellant submits that the Office has failed to set forth a *prima facie* case of obviousness for at least independent claim 26.

As stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). That is, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970). Accordingly, for at least the above reasons, the Appellant respectfully requests the reversal of the rejection of independent claim 26 under 35 U.S.C. § 103(a).

4. One of Ordinary Skill in the Art Would Have No Reason to Combine Kikinis and Kamiya

The Office has failed to set forth a proper statement of motivation to address the admitted deficiencies. There is nothing in Kikinis that suggests any desirability or any need to transmit data packets and a decryption key at different times. There is simply no reason for one skilled in the art to modify Kikinis as suggested by the Office. Kamiya fails to provide any reason to modify the system of Kikinis. The Office summarily concludes that it would have been obvious to combine the disparate teachings of Kikinis and Kamiya for reasons unrelated to the admitted deficiencies. The Office fails to provide a proper statement of motivation for restructuring the system of Kikinis to transmit data packets and a decryption key at different times. As information from the same source can be sent by land and satellite at the same time, Kikinis teaches away from transmitting data packets and a decryption key at different times. Therefore, the alleged statements of motivation are based purely on improper hindsight. Even if Kikinis’ system could be drastically modified as suggested by the Office, the resulting modified system

would nevertheless fail to show each and every limitation claimed by Appellant, as detailed above. As each and every claim limitation is not disclosed by the combination of Kikinis and Kamiya and the Office fails to properly address at least these claim limitations, the rejections are improper and should be withdrawn.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *see also KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. *KSR*, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. *Id.* at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. *Id.*; *In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. *KSR*, 127 S. Ct. at 1740-41.

Accordingly, in view of the preceding arguments, because the combination of Kikinis and Kamiya fails to present a *prima facie* case of obviousness against the claimed inventions, Appellant respectfully requests that the rejection of at least claim 26 be withdrawn and Appellant respectfully requests that claim 26 and all claims dependent thereon be allowed.

F. The Rejection of Dependent Claims 27-32 is Improper

As these dependent claims encompass the limitations of independent claims 24, 25, and 26, these claims should be allowed for at least the reasons stated above. For at least these reasons, Appellant respectfully submits that the rejections of the pending claims are improper and request that they be withdrawn. Additionally, these claims are separately patentable over the combination of references for at least the reasons stated below.

1. Dependent Claim 27 is Separately Patentable

Dependent claim 27 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the transmission mode is a satellite delivery system comprised of a network processing center with an associated provider antenna and at least one subscriber terminal with an associated subscriber antenna.” Accordingly, Appellant respectfully requests that the rejection of claim 27 be withdrawn.

2. Dependent Claim 28 is Separately Patentable

Dependent claim 28 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the satellite delivery system further comprises a satellite.” Accordingly, Appellant respectfully requests that the rejection of claim 28 be withdrawn.

3. Dependent Claim 29 is Separately Patentable

Dependent claim 29 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the transmission mode is a satellite delivery system comprised of a network processing center with an associated provider antenna and at least one subscriber terminal with an associated subscriber antenna.” Accordingly, Appellant respectfully requests that the rejection of claim 29 be withdrawn.

4. Dependent Claim 30 is Separately Patentable

Dependent claim 30 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the satellite delivery system further comprises a satellite.” Accordingly, Appellant respectfully requests that the rejection of claim 30 be withdrawn.

5. Dependent Claim 31 is Separately Patentable

Dependent claim 31 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the transmission mode is a satellite delivery system comprised of a provider antenna at a provider location for communicating via satellite signals to a subscriber antenna.” Accordingly, Appellant respectfully requests that the rejection of claim 31 be withdrawn.

6. Dependent Claim 32 is Separately Patentable

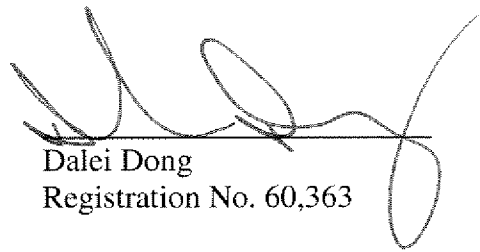
Dependent claim 32 is separately patentable over Kikinis and Kamiya. The references fail to disclose “wherein the satellite delivery system further comprises a satellite.” Accordingly, Appellant respectfully requests that the rejection of claim 32 be withdrawn.

IX. CONCLUSION

In view of the foregoing, Appellant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,



Dalei Dong
Registration No. 60,363

Date: April 23, 2010

Hunton & Williams, LLP
1900 K St., N.W.
Washington, D.C. 20006-1109
Tel. (202) 955-1500
Fax (202) 778-2201

APPENDIX A - CLAIMS

1-18. (Cancelled)

19. (Withdrawn) A method for transmitting data, said method comprising the steps of:

providing data for transmission to a recipient;

selecting and addressing a first set of data for transmission to said recipient via a first transmission method, and

selecting and addressing a second set of data for transmission to said recipient via a second transmission method.

20. (Withdrawn) The system of claim 19 above, wherein said first set of data is selected and addressed for transmission via a wired data transmission network and said second set of data is selected and addressed for transmission via a satellite transmission system.

21. (Withdrawn) The system of claim 20 above, wherein said the first and second sets of data are selected and addressed for transmission via the Internet and further wherein the first set of data is addressed to follow a first transmission path and the second set of data is addressed to follow a second transmission path.

22. (Withdrawn) The system of claim 19 above, wherein said first set of data is addressed to be transmitted via a first frequency and said second set of data is addressed to be transmitted via a second frequency.

23. (Withdrawn) The system of claim 19 above, wherein said first set of data is designated to be transmitted at a first time and said second set of data is designated to be transmitted at a second time.

24. (Previously Presented) A method for requesting and securely receiving data from the Internet, said method comprising the steps of:

- receiving a request for data;

- collecting data in response to said request;

- packetizing said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data;

- selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;

- selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency;

- transmitting said first set of data packets via said first channel; and

- transmitting said second set of data packets via said second channel.

25. (Previously Presented) A computer readable medium executing and storing a software application for enabling requesting and securely receiving data from the Internet, said software

application comprising:

- one or more instructions for receiving a request for data;
- one or more instructions for collecting data in response to said request;
- one or more instructions for packetizing said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data;
- one or more instructions for selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;
- one or more instructions for selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency;
- one or more instructions for transmitting said first set of data packets via said first channel; and
- one or more instructions for transmitting said second set of data packets via said second channel.

26. (Previously Presented) A system for requesting and securely receiving data, said system comprising:

- a first computing element for receiving a request for data;
- a second computing element for collecting data in response to said request; wherein said second computing element packetizes said collected data into at least two sets of data packets,

wherein a first set of data packets comprises encrypted data and a second set of data packets comprises a key for decoding said encrypted data;

a first transmission system for transmitting said first set of data from said second computing element to said first computing element at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets;

a second transmission system for transmitting said second set of data from said second computing element to said first computing element at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency.

27. (Previously Presented) The method of claim 24, wherein the transmission mode is a satellite delivery system comprised of a network processing center with an associated provider antenna and at least one subscriber terminal with an associated subscriber antenna.

28. (Previously Presented) The method of claim 27, wherein the satellite delivery system further comprises a satellite.

29. (Previously Presented) The computer readable medium of claim 25, wherein the transmission mode is a satellite delivery system comprised of a network processing center with an associated provider antenna and at least one subscriber terminal with an associated subscriber antenna.

30. (Previously Presented) The computer readable medium of claim 29, wherein the satellite delivery system further comprises a satellite.

31. (Previously Presented) The system of claim 26, wherein the transmission mode is a satellite delivery system comprised of a provider antenna at a provider location for communicating via satellite signals to a subscriber antenna.

32. (Previously Presented) The system of claim 31, wherein the satellite delivery system further comprises a satellite.

APPENDIX B - EVIDENCE

NONE

APPENDIX C - RELATED PROCEEDINGS

NONE